

31A-28-109. Assessments.

(1) (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each class or subclass, at the time and for the amounts that the board of directors finds necessary.

(b) Member insurer liability for an assessment is established as of the coverage date.

(c) Subject to Subsection (1)(d), a called assessment:

(i) is due not less than 30 days after prior written notice to the member insurer; and

(ii) shall accrue interest at 10% per annum on and after the due date.

(d) Notwithstanding Subsection (1)(c), the association may:

(i) assess the association's members as of the coverage date; and

(ii) defer the collection of the assessment described in Subsection (1)(d)(i).

(e) An assessment:

(i) has the force and effect of a judgment lien against the member insurer; and

(ii) may not be extinguished until paid.

(2) The two classes of assessment are described in Subsections (2)(a) and (2)(b).

(a) A Class A assessment shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. A Class A assessment may be authorized and called whether or not related to a particular impaired or insolvent insurer.

(b) A Class B assessment shall be authorized and called to the extent necessary to carry out the powers and duties of the association under Section 31A-28-108 with regard to an impaired or an insolvent insurer.

(3) (a) (i) The amount of a Class A assessment:

(A) shall be determined by the board of directors; and

(B) may be authorized and called on a pro rata or non-pro rata basis.

(ii) If the Class A assessment is pro rata, the board of directors may credit the assessment against future Class B assessments.

(iii) The total of the non-pro rata assessments may not exceed \$300 per member insurer in any one calendar year.

(b) The amount of a Class B assessment shall be allocated for assessment purposes among subclasses pursuant to an allocation formula that may be based on:

(i) the premiums or reserves of the impaired or insolvent insurer; or

(ii) any other standard determined by the board of directors in the board of directors' sole discretion as being fair and reasonable under the circumstances.

(c) (i) A Class B assessment against a member insurer for the life insurance subclass, the annuity subclass, and the unallocated annuity subclass shall be in the proportion that the premiums received on business in this state by the member insurer on policies or contracts included in the subclass for the three most recent calendar years for which information is available preceding the year which includes the coverage date bears to the premiums received on business in this state for the same period by the assessed member insurers.

(ii) A Class B assessment against a member insurer for an accident and health

insurance subclass shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts included in the subclass for the most recent calendar year for which information is available preceding the year in which the assessment is made bears to the premiums received on business in this state on policies or contracts included in the subclass for that calendar year by the assessed member insurers.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be authorized or called until necessary to implement the purposes of this part.

(e) Classification of assessments and premiums under Subsection (3)(b) and computation of assessments under this Subsection (3) shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(f) The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the day on which the assessment is authorized.

(4) (a) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board of directors, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations.

(b) If an assessment against a member insurer is abated or deferred in whole or in part under Subsection (4)(a), the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(c) Once a condition that caused a deferral is removed or rectified, the member insurer shall pay the assessments that were deferred pursuant to a repayment plan approved by the association.

(5) (a) (i) Subject to Subsection (5)(b), the total of the assessments authorized by the association on a member insurer for each subclass may not in any one calendar year exceed 2% of that member's total average annual assessable premium in that subclass as defined in Subsection (3).

(ii) If two or more assessments are authorized in one calendar year with respect to one or more insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation in Subsection (5)(a)(i) shall be equal and limited to the highest of the total average annual assessable premiums of the different calendar year periods involved in the assessment or assessments.

(iii) If the maximum assessment together with the other assets of the association do not provide in one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon after as permitted by this part.

(b) The board of directors may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(c) If the maximum assessment for the life insurance or annuity subclass in any one year does not provide an amount sufficient to carry out the responsibilities of the association, the board of directors shall assess the other of the subclasses of the life

insurance and annuity class for the necessary additional amount:

- (i) pursuant to Subsection (3)(b); and
- (ii) subject to the maximum stated in Subsection (5)(a).

(6) (a) The board of directors may, by an equitable method established in the plan of operation, refund to member insurers in proportion to the contribution of each insurer to that subclass the amount by which the assets of the subclass exceed the amount the board of directors finds is necessary to carry out the obligations of the association with regard to that subclass, including assets accruing from:

- (i) assignment;
- (ii) subrogation;
- (iii) net realized gains; and
- (iv) income from investments.

(b) Notwithstanding Subsection (6)(a), a reasonable amount may be retained to provide funds for the continuing expenses of the association and for future losses.

(7) A member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, may consider the amount reasonably necessary to meet its assessment obligations under this part.

(8) (a) The association shall issue to each insurer paying an assessment under this part, other than a Class A assessment, a certificate of contribution, in a form approved by the commissioner, for the amount of the assessment paid.

(b) The outstanding certificates described in Subsection (8)(a) shall be of equal dignity and priority without reference to amounts or dates of issue.

(c) (i) A certificate of contribution described in Subsection (8)(a) may be shown by the insurer in its financial statement as an asset in the amount of the certificate of contribution less the amount by which the insurer's premium taxes have already been reduced with respect to the certificate.

(ii) For good cause shown, the commissioner may order the insurer to show a different amount in its financial statement than the amount under Subsection (8)(c)(i).

(9) (a) The association may request information from a member insurer to aid in the exercise of the association's power under this part.

(b) A member insurer shall comply promptly with a request of the association under this Subsection (9).

Amended by Chapter 292, 2010 General Session